IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

MFA.No. 61 of 2003(B)

OP(MV). 448/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THODUPUZHA
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APPELLANT: PETITIONERS 1 TO 3:
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1. **JOSE THOMAS, THALCHIRAYIL, ELEMDESOM P.O., THODUPUZHA.**

2. **NIMMY JOSE, (MINOR) THALCHIRAYIL, ELEMDESOM P.O., THODUPUZHA, REPRESENTED BY GUARDIAN 1ST APPELLANT.**

3. **NISHA JOSE, (MINOR), THALACHIRAYIL HOUSE, ELEMDESOM P.O., THODUPUZHA, (APPELLANTS 2 & 3 REP. BY GUARDIAN & NEXT FRIEND 1ST APPELLANT.)**

BY ADV. SRI.SHAJI THOMAS PORKATTIL
SRI.SUDHEESH.A.

RESPONDENTS:
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1. **RAHMATH ABDULLA, S/O. SULIMAN, THEKKAELIYIL HOUSE, KUDAYATHOOR P.O.**

2. **RAHIM, S/O. ABUBECKER, MANIYAMKALAYIL, KUDAYATHOOR P.O., KEETTILA KARA.**

3. **DIVISIONAL MANAGER, NATIONAL INSURANCE COMPANY, THODUPUZHA.**

4. **BIJU PHILIP, S/O. PHILIP, KAITHAPARAMBIL HOUSE, ELAMDESAM P.O., THODUPUZHA.**

5. **BINU PHILIP, KAITHAPARAMBIL HOUSE, ELAMDESOM P.O., THODUPUZHA.**

6. **DIVISIONAL MANAGER, UNITED INDIA INSURANCE COMPANY LTD., THODUPUZHA.**

BY ADV. SRI.K.K.CHANDRAN PILLAI - R4 & R5
SMT.SARAH SALVY - R3
SMT.P.A.REZIYA - R6

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A.No. 61 of 2003

Dated this the 23rd day of May, 2007

Judgment

Koshy, J.

A 31 year old woman died in a motor accident. Her husband and two minor children claimed compensation. The Tribunal found that the accident occurred due to the negligence of the second respondent driver of the vehicle insured by the third respondent. Total compensation was fixed at Rupees Two lakhs against a claim of Rs.5,00,000/-. Dependency compensation arrived was only Rs.1,65,000/-. Only quantum of compensation is disputed in this appeal.

2. According to the appellants, the deceased was a tailor by profession and was getting Rs.1,500/- per month from that profession. It is further stated that she was having a cow and she was getting Rs.1,000/- per month by selling milk. It is also stated that she was doing household jobs for others and was getting Rs.750/- per month and getting more than Rs.3,250/- monthly. She was pregnant at the time of death. She has left behind two children apart from her husband. The tribunal fixed

Rs.1,800/- as the monthly income which, according to the appellants, is very low. It is also argued that in Lata Wadhwa and others v. State of Bihar and others (AIR 2001 SC 3218), it was held by the Apex Court that household work of a woman is not valueless and in the absence of any data earning of a housewife aged 34 to 59 can be fixed at Rs.3,000/- per month. Therefore, it was argued that at least Rs.3,000/- should have been fixed as the monthly income. The accident occurred in 1998. Even though it was contended that she was a tailor and she was also earning by maintaining a cow etc. the tribunal found that there is no acceptable evidence to prove that. Anyway, she was a house wife. Considering the status of the family and considering the totality of evidence, the Tribunal fixed Rs.1,800/- as the monthly income of the deceased and we see no ground to interfere in the fixation of family income by the tribunal. She was aged only 31 at the time of death. She left behind two children. She was pregnant also. As per the second schedule, apt multiplier for calculating the compensation for the death of a 31 year old person is 17, but, the tribunal has taken only 12 as the multiplier. We are of the opinion that the tribunal should have fixed the

multiplier as 17. Dependency compensation has to be calculated by deducting one-third of the monthly income and the total compensation payable will be Rs.1,200 x 12 x 17 = Rs.2,44,800/-. The tribunal has fixed the dependency compensation at Rs.1,65,600/-. So, the balance payable will be Rs.79,200/-. Tribunal has awarded just and reasonable compensation under other heads. Third respondent insurance company is liable to deposit the above amount with 9% interest from the date of application till its deposit within three months from the date of receipt of a copy of this judgment. On deposit of the amount first appellant is allowed to withdraw Rs.25,000/-. Appellants 2 and 3, minor children, are entitled to get the entire balance amount of compensation in equal proportion and it should be deposited in Union Bank of India, Thodupuzha branch till appellants 2 and 3 attain majority subject to further orders by the tribunal.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A. NO.61/2003

JUDGMENT

Dated:23rd May, 2007